

ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE ADDING NEW ARTICLE 15 TO CHAPTER 25-1 OF THE  
2 CODE RELATING TO AFFORDABLE HOUSING INCENTIVES; AND  
3 REPEALING AND REPLACING SECTION 25-9-347 OF THE CODE  
4 RELATING TO IMPACT FEE EXEMPTIONS FOR AFFORDABLE HOUSING.  
5

6 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:  
7

8 **PART 1.** The Council finds that:

- 9 (A) S.M.A.R.T. Housing is housing that is safe, mixed-income, accessible,  
10 reasonably priced, transit-oriented, and compliant with the City's Green  
11 Building Standards.
- 12 (B) The City Council adopted the S.M.A.R.T. Housing program through  
13 Resolution Nos. 990909-61, 000420-76, 040115-44, and 20070607-013,  
14 encouraging the development of housing that meets S.M.A.R.T. housing  
15 standards by waiving certain development related fees and exempting the  
16 developments from impact fees.
- 17 (C) The Austin Housing Incentives Task Force ("AHITF") submitted its report  
18 to the City Council on February 20, 2007 recommending that the City  
19 enhance incentives for developers of S.M.A.R.T. Housing.
- 20 (D) The City desires to adopt an ordinance codifying the City's current  
21 S.M.A.R.T. Housing program and to improve the program by incorporating  
22 AHITF recommendations.

23 **PART 2.** Chapter 25-1 of the City Code is amended by adding Article 15 to read as  
24 follows:

25 **ARTICLE 15. S.M.A.R.T. HOUSING.**

26 **§ 25-1-701 Definitions.**

27 In this article:

- 28 (1) **DIRECTOR** means the director of the City's Neighborhood Housing and  
29 Community Development Department.
- 30 (2) **HOUSING COSTS** means:
- 31

1  
2 (a) for an owner-occupied dwelling unit, the average monthly cost for  
3 mortgage, utilities, and, if applicable, condominium dues; or  
4

5 (b) for a dwelling unit for lease, the average monthly cost for rent and  
6 utilities.  
7

8 (3) MEDIAN FAMILY INCOME means the median family income for the  
9 Austin statistical metropolitan area as determined by the director of the  
10 City's Neighborhood Housing and Community Development  
11 Department.

12 **§ 25-1-702 ADMINISTRATION.**

13 The director shall administer the S.M.A.R.T. Housing program and may  
14 adopt and implement program guidelines and establish the requirements for an  
15 application under the program.

16 **§ 25-1-703 PROGRAM REQUIREMENTS.**

17 (A) S.M.A.R.T. Housing is housing that is safe, mixed-income, accessible,  
18 reasonably priced, transit-oriented, and compliant with the City's Green  
19 Building Standards.

20 (B) S.M.A.R.T. Housing must:

21 (1) be safe by providing housing that complies with Title 25 of the City Code  
22 (*Land Development*);

23 (2) provide mixed-income housing by including dwelling units that are  
24 reasonably-priced, as described in Subsections (C) and (D);

25 (3) provide for accessibility by:

26 (a) including dwelling units that comply with the accessibility  
27 requirements of the Building Code in:

28 (1) each building with four or more dwelling units; and

29 (2) at least five percent of the dwelling units in each  
30 development; or

1 (b) for a development with three or fewer dwelling units, complying  
2 with the design and construction requirements of Chapter 5-1,  
3 Article 3, Division 2 (*Design and Construction Requirements*); and

4 (4) comply with the transit oriented guidelines adopted by the director; and

5 (5) achieve at least a one star rating under the Austin Green Building  
6 program.

7 (C) Except as provided in Subsection (D), a reasonably-priced dwelling unit is one  
8 that is affordable for purchase or rental by a household that meets the housing  
9 costs and income qualifications of this subsection.

10 (1) This paragraph provides qualifications on the amount of household  
11 income spent on housing costs.

12 (a) Except as provided by Subparagraphs (b) and (c), housing costs of  
13 a household may not exceed 30 percent of its gross income.

14 (b) A household may spend up to 35 percent of its gross income on  
15 housing costs if a household member receives City-approved  
16 homebuyer counseling.

17 (c) A household that complies with other federal, state, or local  
18 income eligibility standards is not subject to the expenditure  
19 qualifications of Paragraphs (a) and (b).

20 (2) This paragraph provides qualifications on household income.

21 (a) Except as provided in Subparagraph (b), the household income  
22 may not exceed 80 percent of the median family income.

23 (b) In a Downtown Mixed Use (DMU) or Central Business District  
24 (CBD) base zoning district, household income may not exceed:

25 (i) 120 percent of the median family income for an owner-  
26 occupied dwelling unit; or

27 (ii) 80 percent of the median family income for a rental dwelling  
28 unit.

29 (D) For a Vertical Mixed Use (VMU) building, a reasonably priced dwelling unit is  
30 one that meets the affordability requirements of Chapter 25-2, Subchapter E,  
31 Section 4.3.3.F (*Affordability Requirements*).

1       **§ 25-1-704 FEE WAIVERS.**

2           (A) The director may, in accordance with Subsection (B), waive all or a portion of  
3           the following fees, as set by the City's annual fee ordinance, for a S.M.A.R.T.  
4           Housing development:

- 5           (1) Public Works Construction Inspection Fee;
- 6           (2) Watershed Protection and Development Review - Development  
7           Assessment Fee;
- 8           (3) Watershed Protection and Development Review - Traffic Impact  
9           Analysis Fee;
- 10          (4) Watershed Protection and Development Review - Traffic Impact  
11          Analysis Revision Fee;
- 12          (5) Regular Zoning Fee;
- 13          (6) Interim to Permanent Zoning Fee;
- 14          (7) Miscellaneous Zoning Fee;
- 15          (8) Zoning Verification Letter Fee;
- 16          (9) Board of Adjustment Fee;
- 17          (10) Managed Growth Agreement Fee;
- 18          (11) Planned Development Area Fee;
- 19          (12) Preliminary Subdivision Fee;
- 20          (13) Final Subdivision Fee;
- 21          (14) Final Without Preliminary Subdivision Fee;
- 22          (15) Miscellaneous Subdivision Fee;
- 23          (16) Consolidated Site Plan Fee;
- 24          (17) Miscellaneous Site Plan Fee;
- 25          (18) Site Plan Revision Fee;
- 26          (19) Site Plan – Construction Element Fee;

- 1 (20) Building Review Plan Fee;
- 2 (21) Building Permit Fee;
- 3 (22) Electric Permit Fee;
- 4 (23) Mechanical Permit Fee;
- 5 (24) Plumbing Permit Fee;
- 6 (25) Concrete Permit Fee;
- 7 (26) Demolition Permit Fee;
- 8 (27) Electric Service Inspection Fee;
- 9 (28) Move House Onto Lot Fee; and
- 10 (29) Move House Onto City Right-of-Way Fee.

11 (B) A developer is eligible for a waiver of the fees described in Subsection (A) if  
12 the director determines that the S.M.A.R.T. housing development provides the  
13 percentage of reasonably-priced dwelling units prescribed by this section.

14 (1) Except as provided in Paragraph (2):

- 15 (a) if at least ten percent of the dwelling units are reasonably-priced,  
16 the development is eligible for a waiver of 25 percent of the fees;
- 17 (b) if at least 20 percent of the dwelling units are reasonably-priced,  
18 the development is eligible for a waiver of 50 percent of the fees;
- 19 (c) if at least 30 percent of the dwelling units are reasonably-priced,  
20 the development is eligible for a waiver of 75 percent of the fees;  
21 and
- 22 (d) if at least 40 percent of the dwelling units are reasonably-priced,  
23 the development is eligible for a waiver of 100 percent of the fees.

24 (2) The development is eligible for a waiver of 100 percent of the fees if:

- 25 (a) except as provided in Subparagraphs (c) and (d), the development  
26 is located within the Urban Roadways boundary described by  
27 Chapter 25-2, Subchapter E (*Design Standards and Mixed Use*),  
28 and at least five percent of the dwelling units are reasonably priced

1 and are transferred to a City approved affordable housing land trust  
2 or other similar entity approved by the director;

3 (b) except as provided in Subparagraph (c), the development is located  
4 outside the Urban Roadways boundary described by Chapter 25-2,  
5 Subchapter E (*Design Standards and Mixed Use*), and at least ten  
6 percent of the dwelling units are reasonably priced and are  
7 transferred to a City approved affordable housing land trust or  
8 other similar entity approved by the director;

9 (c) the development is a Vertical Mixed Use (VMU) building that  
10 complies with the affordability requirements of Chapter 25-2,  
11 Subchapter E, Section 4.3.3.F (*Affordability Requirements*); or

12 (d) the development is located in either a Downtown Mixed Use  
13 (DMU) or Central Business District (CBD) base zoning district,  
14 and at least ten percent of the dwelling units are reasonably-priced.

15 **§ 25-1-704 REQUIRED AFFORDABILITY PERIOD.**

16 (A) To be eligible for the S.M.A.R.T. Housing program, unless a longer term is  
17 required by law, private agreement, or another provision of this Code, all  
18 reasonably-priced dwelling units in a S.M.A.R.T. Housing development must  
19 remain reasonably-priced for the following affordability periods commencing  
20 on the date of initial occupancy:

21 (1) except as provided in Paragraphs (3) and (4), for dwelling units within  
22 the University Neighborhood Overlay District, a period of at least fifteen  
23 years;

24 (2) except as provided in Paragraphs (3) and (4), for dwelling units outside  
25 the University Neighborhood Overlay District:

26 (a) if the unit is owner-occupied, a period of at least one year, or if the  
27 owner is receiving federal housing assistance, a period of at least  
28 five years; or

29 (b) if the unit is a rental unit, a period of at least five years.

30 (3) for dwelling units in a DMU or CBD base zoning district, a period of at  
31 least 99 years for owner-occupied units, and a period of at least 40 years  
32 for rental units; and

1 (4) for dwelling units in a VMU building that has or will benefit from an  
2 exemption from dimensional standards available under Chapter 25-2,  
3 Article 4, Section 4.3.3.E (*Dimensional and Parking Requirements*), the  
4 applicable affordability period set forth Chapter 25-2, Article 4, Section  
5 4.3.3.F (*Affordability Requirements*).

6 (B) If a reasonably-priced dwelling unit within a S.M.A.R.T. Housing development  
7 is converted from a rental unit to an owner-occupied dwelling unit during the  
8 applicable affordability period, the dwelling unit shall be subject to the  
9 affordability period applicable to an owner-occupied dwelling unit, and the new  
10 affordability period begins on the date that the converted dwelling unit is  
11 available for owner occupancy.

12 (C) If the development does not comply with the requirement to maintain the  
13 applicable percentage of dwelling units as reasonably-priced for the duration of  
14 the applicable affordability period, the developer shall reimburse the City for all  
15 fees.

16 (D) The director may require the developer to execute an agreement and restrictive  
17 covenant or other binding restriction on land use that preserves affordability in  
18 accordance with the S.M.A.R.T. Housing program. The agreement may  
19 include:

20 (1) terms that require a defaulting applicant to pay the otherwise applicable  
21 fees;

22 (2) liquidated damages in an amount up to twice the amount of fees waived,  
23 being such an amount that will fairly compensate the City for  
24 administrative costs incurred; and

25 (3) liquidated damages that will fairly compensate the City for any breach  
26 that results in the loss of reasonably-priced dwelling units during the  
27 affordability period.

28 **PART 3.** Section 25-9-347 (*Exemption for Certain Affordable Housing*) of the City  
29 Code is repealed and replaced to read as follows:

30 **§ 25-9-347 EXEMPTION FOR CERTAIN AFFORDABLE HOUSING.**

31  
32 (A) The community development officer may exempt not more than 1,500  
33 service units of affordable housing constructed each fiscal year from the  
34 requirement to pay impact fees under this article. Service units of affordable  
35 housing within the development known as the Robert Mueller Municipal

1 Airport development that are granted exemptions from paying impact fees  
2 do not count against the annual cap of 1,500.  
3

4 (B) The community development officer shall establish guidelines for the  
5 selection of the service units to receive an exemption under this section. The  
6 guidelines must include a requirement for a written application.  
7

8 (C) To be eligible for an exemption under this section, affordable housing must:  
9

10 (1) meet design and construction guidelines established by the  
11 community development officer for habitability, affordability,  
12 accessibility, water conservation, and energy efficiency;  
13

14 (2) be served by existing City infrastructure and services; and  
15

16 (3) be a newly constructed single family home or multifamily housing  
17 unit located within the corporate limits of the City that is:  
18

19 (a) approved for assistance under an affordable housing program  
20 funded with Community Development Block Grant or federal  
21 HOME program assistance funds administered by the City;  
22

23 (b) approved for assistance under a program for affordable housing  
24 construction funding or down payment assistance administered  
25 by the Austin Housing Finance Corporation; or  
26

27 (c) approved under guidelines for non-assisted affordable housing  
28 units established by the community development officer that  
29 meet the requirements of this section.  
30

31 (D) To receive an exemption under this section, an applicant who is approved for  
32 an exemption must provide to the community development officer an  
33 agreement, a restrictive covenant, a deed of trust, a promissory note, or  
34 other documents determined to be necessary by the city attorney to establish  
35 an enforceable obligation by the applicant to:  
36

37 (1) pay to the City an amount equal to the impact fee otherwise applicable  
38 to the housing unit if the applicant does not comply with this section  
39 and applicable guidelines;  
40

- 1 (2) reserve by covenant the applicable affordable dwelling units for the  
2 duration of the affordability period prescribed by Subsection (E); and  
3  
4 (3) pay liquidated damages that will fairly compensate the City for any  
5 breach.  
6

7 (E) To retain an exemption under this section, a unit of affordable housing must  
8 comply with the requirements of this subsection.  
9

10 (1) Except as provided in Paragraphs (2) and (3), a unit must be available  
11 for occupancy by a person whose gross household income does not  
12 exceed 80 percent of the median household income for the Austin  
13 Standard Metropolitan Statistical Area for the following affordability  
14 period:  
15

16 (a) in the university neighborhood overlay district, a period of no  
17 less than 15 years; or  
18

19 (b) outside the university neighborhood overlay district:  
20

21 (i) for rental housing, a period of no less than five years; or  
22

23 (ii) for owner-occupied housing a period of no less than one  
24 year, unless the owner is receiving federal housing  
25 assistance, in which case, a period of no less than five  
26 years.  
27

28 (2) A unit within a Vertical Mixed Use building must comply with the  
29 affordability requirements for the affordability period under Chapter  
30 25-2, Subchapter E, Section 4.3.3.F (*Affordability Requirements*).  
31

32 (3) In Downtown Mixed Use (DMU) or Central Business District (CBD)  
33 base zoning district:  
34

35 (a) an owner-occupied unit must be available for occupancy for a  
36 period of not less than 99 years by an occupant whose gross  
37 household income does not exceed 120 percent of the median  
38 family income for the Austin Standard Metropolitan Statistical  
39 Area; or  
40

1 (b) a rental unit must be available for occupancy for a period of not  
2 less than 40 years by an occupant whose gross household  
3 income does not exceed 80 percent of the median family  
4 income for the Austin Standard Metropolitan Statistical Area.  
5

6 (4) An affordability period prescribed by this subsection begins on the  
7 date that an affordable unit is available for occupancy.  
8

9 (F) If an applicant who receives an exemption under this section does not  
10 comply with Subsection (E), defaults on its obligations under documents  
11 executed under Subsection (D), or does not perform in accordance with the  
12 conditions for receipt of the exemption, the City may initiate legal  
13 proceedings to recover the impact fees that would have applied to the  
14 housing unit and damages. Funds recovered for impact fees shall be  
15 deposited in the impact fee account of the Water Utility. Damages collected  
16 to compensate the City for loss of affordable housing units shall be  
17 deposited into the S.M.A.R.T. Housing CIP Fund account of the  
18 Neighborhood Housing and Community Development Department.  
19

20 (G) Before the director of the Water Utility may issue a tap permit authorizing  
21 connection to the City water or wastewater system for a property receiving  
22 an exemption under this section, the community development officer must  
23 provide a written certification to the director of the Water Utility identifying  
24 the service address of the affordable housing unit.  
25

26 (H) The community development officer may revoke a certification under  
27 Subsection (G) if the applicant does not finish construction of the approved  
28 affordable housing unit:  
29

30 (1) within 15 months after certification; or  
31

32 (2) for a multifamily housing unit, 24 months after certification.  
33

34 (I) This section does not require a refund by the Water Utility of impact fees  
35 previously paid.  
36

37 (J) An exemption under this section may not be assigned or transferred by the  
38 applicant to another property.

1 **PART 4.** Affordability impact statements shall be prepared in accordance with this part.

2 (A) A City department may not propose a change to an ordinance, rule, or process  
3 that impacts housing affordability unless the City's Neighborhood Housing and  
4 Community Development Department (NHCD) has prepared an affordability  
5 impact statement for the proposed regulation before the initiation of external  
6 stakeholder discussion.

7 (B) If an affordability impact statement shows a negative impact on housing  
8 affordability, the proposed change may only go forward upon approval by the  
9 city manager.

10 (C) A City board, commission, or subcommittee may offer recommendations to the  
11 city council on issues affecting housing affordability only after NHCD has  
12 prepared an affordability impact statement.

13 (D) An affordability impact statement is not required for council adoption of  
14 annexations, budgets, or budget amendments except for those that increase  
15 development fees that impact housing affordability that are not otherwise  
16 waived.

17 **PART 5.** The City's Neighborhood Housing and Community Development Department  
18 is charged as the lead department on housing policy and the single point of contact to  
19 facilitate S.M.A.R.T. Housing development.

20 **PART 6.** The City recognizes the role that the Austin Housing Finance Corporation  
21 (AHFC) has regarding S.M.A.R.T. Housing development and charges the AHFC with the  
22 responsibilities in this part. All applicable operating agreements between the City and  
23 AHFC shall include the following responsibilities of AHFC regarding S.M.A.R.T.  
24 Housing:

25 (A) AHFC is charged as the lead agency to foster partnerships with neighborhoods  
26 and the home building industry in order to develop, finance, rehabilitate,  
27 relocate, and operate S.M.A.R.T. Housing in the City.

28 (B) AHFC shall verify that all AHFC financed developments comply with all  
29 S.M.A.R.T. Housing standards.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

(C) Except for land with an adopted master plan, AHFC has a right of first refusal for receiving any City owned surplus real property for development as S.M.A.R.T. Housing. Subject to any limitations in the Texas Local Government Code, the City may transfer surplus real property to AHFC for development for S.M.A.R.T. Housing without regard to any restrictions on transfer of the real property prescribed by the City Code.

**PART 7.** This ordinance takes effect on \_\_\_\_\_, 2007.

**PASSED AND APPROVED**

\_\_\_\_\_, 2007

§  
§  
§

\_\_\_\_\_  
Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk